



**DRAFT MINUTES**

**CITY OF SCOTTSDALE FIRE LOCAL BOARD OF THE  
PUBLIC SAFETY PERSONNEL RETIREMENT SYSTEM (PSPRS)  
REGULAR MEETING**

**10:00 a.m., Thursday, July 19, 2012**

**Police and Fire Department Headquarters—Arizona Room  
8401 E. Indian School Road  
Scottsdale, Arizona 85251**

**PRESENT:** Jack Cross, Chairman/Mayoral Designee  
Jeffrey Burg, Citizen Member  
Todd Caverner, Elected Member  
Velicia McMillan, Citizen Member/Merit Head  
Steve Springborn, Elected Member

**STAFF:** Ken Nemec  
Chanda Washington

**OTHERS:** Mike Anthony, Esq.  
Hannah Auckland, Esq.  
Fire Captain Robert D. Curley, Jr.  
Laura Jean Curley  
Dr. Jody Reiser (via telephone)

**Call to order**

**[City of Scottsdale Fire Local Board and Police Local Board combined meetings occurred from 11:16 a.m. to 11:50 a.m.]**

Chairman Cross called the meeting to order at 10:04 a.m. He stated that the first order of business was the acknowledgement that all Board members were present.

**Roll call**

A formal roll call confirmed the members present as stated above.

**Possible Executive Session**

Executive Session may occur at any time during this meeting.

**1. Review and approval of meeting minutes—May 31, 2012**

Board Member Springborn requested that references to "Fire Chief Curley" be corrected to "Fire Captain Curley" in paragraphs 3 and 4 on page 4 of the May 31, 2012 meeting minutes.

**BOARD MEMBER SPRINGBORN MOVED TO APPROVE THE REGULAR MEETING MINUTES OF THE MAY 31, 2012 PSPRS FIRE LOCAL BOARD MEETING AS AMENDED. BOARD MEMBER CAVNER SECONDED THE MOTION, WHICH CARRIED BY A VOTE OF FIVE (5) TO ZERO (0).**

**2. Review and approval of executive session meeting minutes—May 31, 2012**

Board Member Springborn requested that NFDA be changed to NFPA in paragraph 6 on page 2 of the May 31, 2012 executive session minutes.

Board Member McMillan pointed out that DRAFT MINUTES was missing from the top of the executive session minutes.

**BOARD MEMBER CAVNER MOVED TO APPROVE THE EXECUTIVE SESSION MEETING MINUTES OF THE MAY 31, 2012 PSPRS FIRE LOCAL BOARD MEETING AS AMENDED. BOARD MEMBER SPRINGBORN SECONDED THE MOTION, WHICH CARRIED BY A VOTE OF VOTE OF FIVE (5) TO ZERO (0).**

**3. Discussion and Vote on the Accidental Disability Retirement Application of Fire Captain Robert D. Curley, Jr.**

Chairman Cross recalled that there were only three Board members present during the May 31, 2012 discussion of Fire Captain Robert D. Curley, Jr.'s accidental disability retirement application.

He stated that after reviewing the medical report by the IME physician. Dr. Reiser, the Board requested that staff arrange a telephonic interview with the doctor during today's meeting.

Chairman Cross explained that the City knew that Fire Captain Robert D. Curley, Jr. had epilepsy when he was hired and the problem arose when he exceeded the number of seizures allowed within the guidelines specified time period. He stated that the physician's answer to question 4 was vague since it only discusses the Applicant's pre-existing condition of epilepsy and not the fact that the Applicant was disqualified from being a firefighter when he had the second seizure.

Board Member Springborn emphasized his need to discuss with Dr. Reiser whether sleep deprivation or the stressors associated with being a firefighter were linked to the causation of the Applicant's seizures. He argued that if someone broke their leg at age eight, their pre-existing condition would not preclude them from being hired as a firefighter.

Board Member Springborn noted that Fire Captain Curley did not have a seizure for ten years prior to 2006. In 2005/2006 stress levels increased for department members

when they developed the municipal department. In 2011 the Applicant's duties changed dramatically when he took on the responsibility of staffing captain of a high volume station.

Board Member Springborn explained that he needs to know whether the aforementioned stressors could have contributed to the cause of the Applicant's seizures, since the accidental disability causation statute requires that an injury be associated to job related duties.

Board Member McMillan stated that although the seizures may have been triggered while the applicant was on the job, the job was not the cause of the condition of epilepsy which contributed to the occurrence of the Applicant's seizures.

Ms. Washington reported that the Applicant supplied staff with a questionnaire answered by his physician. She stated that they had also received the IME physician's corrected medical report, which now reflects the City of Scottsdale rather than the City of Phoenix.

Mr. Anthony clarified that the legal standard in this matter requires that the IME physician have an opinion to a reasonable degree of medical probability that the job stressors were the cause of the Applicant's seizures. He explained that the term "reasonable degree of medical probability" means that it is more likely than not or greater than a 50% probability that the stressors caused the seizures.

Chairman Cross summarized that Dr. Reiser's medical report reflects the following answers to questions 1-2:

1. Mr. Curley cannot do a reasonable range of duties within his department.
2. Mr. Curley cannot do the duties within his job classification.

He recalled Board Member Springborn's concern that the doctor's answer to question 3 states that "Mr. Curley's epilepsy was not incurred in the performance of his duties as a fire captain."

Chairman Cross commented that everyone was aware that the Applicant was hired with epilepsy and the second seizure that occurred during his employment was the cause of his disqualification as a firefighter. He stated that the doctor's answers to questions 3-4 need to be clarified through a telephonic interview.

Chairman Cross pointed out that if the Applicant has a pre-existing condition that was the cause of all of the seizures then he may not be eligible for an accidental or ordinary disability retirement.

Board Member Springborn confirmed that the seizures were the disqualifying factor. He stated that statistically one-third of the population may have at least one seizure within their lifetime which may be diagnosed as an epileptic seizure. He recalled that the Applicant had seizures in 2006 and 2011.

The telephone interview of Dr. Jody Reiser began. Board Member Springborn asked her if she believes that from a reasonable degree of medical certainty Fire Captain Curley's seizures could have been caused by the stressors associated with the job duties of a fire captain and staffing officer.

Dr. Reiser responded that she discusses conditions that may trigger seizures with her patients such as excessive stress, sleep deprivation, medication, alcohol, or illness. The Applicant previously supplied her with a list of stressors which could have lowered his seizure threshold. She explained since that the Applicant's MRI's and CT scans show that he was born with this illness, he probably has the congenital defect that predisposes him to epilepsy.

Dr. Reiser reiterated that stress, fatigue, sleep deprivation, alcohol, drugs, medication, illness, and fever may trigger seizures.

In response to Board Member McMillan's inquiry regarding whether the same on the job environmental conditions cause seizures if the Applicant did not have epilepsy, Dr. Reiser stated most likely not. She agreed with Board Member McMillan's statement that the Applicant's seizures which were caused by epilepsy are triggered by certain environmental factors.

Chairman Cross summarized that Dr. Reiser was unsure as to the exact cause of the Applicant's seizures, even though numerous environmental factors may have caused the seizures, both job related and other.

In response to Board Member Burg's inquiry regarding whether Fire Captain Curley would have experienced seizures if there were no job stressors, Dr. Reiser responded yes. She explained that during the process of living the Applicant would probably experience other situations that lower his seizure threshold.

Mr. Anthony stated that the Board was struggling with two legal standards that apply to this type of situation. He discussed the fact that the legal standards require that the IME physician have an opinion to a reasonable degree of medical probability that the job stressors were the cause of the Applicant's seizures.

Mr. Anthony explained that a reasonable degree of medical probability means that it is more likely than not or greater than a 50% probability that the stressors caused the seizures.

He stated that the second legal standard requires that if the IME physician has an opinion regarding causation based on a reasonable degree of medical probability and there are multiple potential causes, then the Board must decide whether the job related causes are at least a significant contributing factor.

Dr. Reiser opined that it was more likely than not that the Applicant's seizures were the result of job stressors. She elaborated that Fire Captain Curley is an amazing individual who has accomplished many things, noting that his congenital malformation predisposes him to epilepsy wherein seizures are triggered by stressors such as sleep deprivation.

Chairman Cross confirmed that the Applicant's medical history reflects that his last two seizures occurred after his employment began. He confirmed that Board Members had no further questions for Dr. Reiser.

Mr. Anthony explained that the statute talks in terms of medical conditions rather than symptoms when determining whether an applicant is unable to perform a reasonable range of duties. An Applicant with a pre-existing condition could work in a PSPRS eligible position, but if their work causes them to become disabled and unable to perform their duties then a situation arises where the statute does not draw a bright line.

Board Member McMillan opined that the statute was written in a way that precludes discrimination against anyone with epilepsy since it was possible to work through one's career without ever having a seizure. She stated that once the symptoms become a problem a firefighter would not be able to continue to work.

As an example, Board Member McMillan shared that during her own teenage years her mother's hypertension medication was increased as a result of her worries for her teenage daughter, even though she did not cause the hypertension.

A lengthy discussion ensued regarding the Applicant being precluded from being a firefighter as a result of the seizures rather than his condition of epilepsy.

Board Member McMillan argued that the Fire Department should not be required to assume the responsibility for someone's seizures flaring up when they are tied to the condition of epilepsy.

Board Member Springborn argued that the doctor confirmed there was a 50% probability that the job related stressors caused the Applicant's seizures.

Board Member Burg inquired whether the Board should view the seizures as a condition in and of itself and not as a function of the epilepsy.

Mr. Anthony reiterated that the statute requires that the IME physician's opinion be based on the reasonable degree of probability noting that Dr. Reiser has confirmed that the job stressors were the cause of the Applicant's seizures.

Discussion ensued regarding the medical report reflecting that the seizures were the physical diagnosis rather than epilepsy, therefore moving the seizures from being a symptom to the problem itself.

Board Member Springborn stated that research shows that epilepsy has a large number of symptoms caused by many items such as cancer, tumors, blood conditions, congenital illnesses. He stated that the medical community was unclear as to the causation of the symptoms and Dr. Reiser confirmed that it was more than likely that the seizure was caused by the job stressors.

Board Member Cagner pointed out that in 2005/2006 the firefighters had stressors associated with job uncertainty. Fire Captain Curley also had to deal with more stressors when he was reassigned to a location with an increased workload where the firefighters had to get up several times during the night.

A lengthy discussion ensued regarding whether seizures preclude someone from being a firefighter, if the seizures occurred at home would they be considered job related, and were seizures caused by heart attacks comparable to seizures caused by epilepsy.

Board Member Springborn recalled that in 2004 the City adopted the National Fire Protection Association (NFPA) Standard 1582 which determines the qualifications from a medical standpoint for an individual to become a firefighter. Seizures are not considered a disabling condition if the firefighter has been seizure-free for one year without taking any medication or five years seizure-free while taking medication.

Board Member Springborn noted that Fire Captain Curley's two seizures occurred almost five years apart.

Chairman Cross invited the Applicant to add any comments. Fire Captain Curley recalled that he supplied staff with supplemental medical documentation from his physician. Fire Captain Curley explained that he wrote open-ended questions and his physician responded of her own accord in the supplemental documentation. He stated that his physician is also a neurologist who has the ability to consult with other prominent neurologists within her practice. He added that he has a diagnosis of idiopathic epilepsy, so called because the causation is not understood.

The Board Members had no further questions for the Applicant. Chairman Cross summarized that the Board's dilemma was the fact that there was no direct relationship identified as to the causation.

Mr. Anthony reminded the Board to focus on Dr. Reiser's responses to questions 3 and 4 which caused controversy, noting that today she did confirm that to a reasonable degree of medical probability the job stressors caused the Applicant's seizures.

He stated that question 4 inquires whether the Applicant's disability resulted from a pre-existing physical condition and Dr. Reiser confirmed that the epilepsy began before the Applicant was hired and the seizures were caused by the job stressors.

Board Member Springborn moved to approve the accidental disability retirement pension of Fire Captain Robert D. Curley, Jr. since he does meet the statutory requirements, subject to final payroll calculations and qualified domestic relation orders, based on Captain Curley having a physical condition of seizures which totally prevents him from performing a reasonable range of duties within his job description as a firefighter, and that Captain Curley does have a physical condition of seizures which permanently prevents him from performing a reasonable range of duties within his job classification as firefighter and fire captain. And that Captain Curley's seizure was incurred in the performance of his duties as a fire captain, due to the medical probability, as stated by the IME physician of the Board, that his seizure was more likely than to have been caused by job duty stressors and that Captain Curley's seizure occurred after his induction into the PSPRS on July 1, 2005.

Chairman Cross suggested that Board Member Springborn withdraw his motion and follow the Board's motion guide in order to eliminate too many specificities.

Board Member Springborn expressed his concern that there was a high probability that the State could contest the Board's decision and agreed to withdraw the motion. He opined that by being specific in the motion the Board was confirming that Dr. Reiser's medical opinion was that to a reasonable degree of medical probability the job stressors caused the Applicant's seizures.

Chairman Cross recalled the Board's previous discussion regarding using general motions wherein each Board member could vote and then communicate their reasoning behind their vote.

Chairman Cross invited the Board members to provide their individual vote on the matter since the first motion failed due to the lack of a second.

Board Member Springborn moved to approve the accidental disability retirement pension of Fire Captain Robert D. Curley, Jr. since he does meet the statutory requirements subject to final payroll calculations and qualified domestic relation orders. Board Member Burg seconded the motion.

Board Member Springborn voted aye. He remarked that he stands on the statements he made during his first motion. Chairman Cross pointed out that the statements included references to the information received telephonically from Dr. Reiser earlier today.

Board Member Cagner voted aye. He explained that his vote was based on Dr. Reiser's statement that there was more than likely a causal relationship between the job conditions and the Applicant's seizures.

Board Member Burg voted aye. He stated that the reason for his vote was the fact that the seizures were the disqualifying condition rather than the epilepsy, as well as Dr. Reiser's statement that the seizures were more likely than not caused by the Applicant's job.

Board Member McMillan voted nay. She opined that the questions were asked and answered correctly the first time, noting that based on the doctor's report as well as what she said before the question was rephrased, the doctor had confirmed that the Applicant's condition of epilepsy was not incurred in the performance of his duties as a fire captain.

Board Member McMillan elaborated that the doctor's answer to question 4 was that the applicant's epilepsy began with the onset of his first seizure in 1988 and therefore predated his employment with the City of Phoenix as a full-time fire captain on July 1, 2005.

Chairman Cross explained that he would have voted nay had Dr. Reiser not made the comment that the job had more likely than not caused the seizures. He stated that since the doctor changed her comments on that point and it was clear in the medical records that the two seizures that disqualified the Applicant from being a firefighter both occurred while he was a firefighter for the City of Scottsdale he was going to vote aye.

Chairman Cross informed Fire Captain Curley that the Board has voted in his favor, noting that it was now up to the State Board to make the final decision on the matter. He expressed the Board's appreciation of Fire Captain Curley's many years of service to the citizens of the City of Scottsdale.

**BOARD MEMBER SPRINGBORN MOVED TO APPROVE THE ACCIDENTAL DISABILITY RETIREMENT PENSION OF FIRE CAPTAIN ROBERT D. CURLEY, JR. SINCE HE DOES MEET THE STATUTORY REQUIREMENTS SUBJECT TO FINAL PAYROLL CALCULATIONS AND QUALIFIED DOMESTIC RELATIONS ORDERS, BOARD MEMBER BURG SECONDED THE MOTION, WHICH CARRIED BY A VOTE OF VOTE OF FOUR (4) TO ONE (1). BOARD MEMBER MCMILLAN DISSENTED.**

**4. Discussion of recently enacted legislation and corresponding effect on benefits provided by PSPRS**

Ms. Auckland presented copies of a July 19, 2012 Memorandum re: 2012 Summary of Legislative Changes to the PSPRS Statutes. She stated that some of the statute changes occurred as a result of unusual situations that have never been considered by the Board of Trustees.

Ms. Auckland reported that these 2012 legislative statutory changes become effective August 2, 2012 unless otherwise stated. She elaborated that there were four PSPRS Bills, noting that she did not address Senate Bill 1115 dealing with loan guarantees.

Ms. Auckland explained that in Senate Bill 1116 the first PSPRS provision changed was A.R.S. § 38-843.05 relating to any retired member returning to work. She stated that starting last year employers who rehired retired members were required to pay an alternate contribution rate into the System.

Chairman Cross invited the Police Local Board members to join the Fire Local Board meeting in order to eliminate the need to repeat the PSPRS legislative changes and disability retirement effective date discussions.

Ms. Auckland explained that A.R.S. § 38-846 explains what to do with accumulated contributions in the System upon the death of the last designated beneficiary.

She summarized that A.R.S. § 38-847 details the authority of the Local Boards clarifying that they are not required to provide a rehearing to a claimant or the Board of Trustees if doing so would be contrary to other applicable laws. She stated that the Local Boards are also required to submit all documents submitted for any actions taken including medical board and IME reports.

Ms. Auckland said that A.R.S. § 38-849 relates to limitations on receiving pensions such as severance refunds, the reinstatement of service credits, and the reemployment of retired or disabled members.

She stated that A.R.S. § 38-853 removes the requirement that a PSPRS member initiate the transfer of credited service between employers within two years.



Mr. Anthony explained that firefighters routinely retire and then become fire marshals, which creates a controversy regarding whether they can be a member of the PSPRS as it relates to the 2007 IRS code.

Ms. Auckland stated that A.R.S. § 38-853.01 sets the amount of the discount rate used by the actuary for the redemption calculation.

She summarized that A.R.S. § 38-859 relates to a new provision that the Local Board's medical board was to be used to determine the proximate cause of death for a member killed in the line of duty if the death occurs more than one year after the date of injury for purposes of determining death benefits.

Mr. Anthony recalled a previous Scottsdale case where a police officer who fell down a flight of stairs and injured his back received an accidental disability pension and then died at home almost five years later.

Ms. Auckland stated that A.R.S. § 38-860 requires that a domestic relations order submitted to the PSPRS must be issued by a U.S. court in order to be deemed plan approved.

She explained that HB2409 clarifies the interest payments for members who enter the DROP before January 1, 2012 as well as members who enter the DROP after January 1, 2012.

Ms. Auckland reported that A.R.S. § 38-844.08 refers to the payment of DROP benefits received during a member's simultaneous termination of DROP and employment.

She stated that A.R.S. § 38-853.01 revises the requirement for purchasing credited services, noting that A.R.S. § 38-853.02 establishes that members who purchase service credits shall make payments to the System in lump sum payments through installment payment or through appropriate rollovers.

Ms. Auckland summarized that HB2745 amends PSPRS statute A.R.S. § 38-843.05 which references the contribution rate paid by employers who hire retired PSPRS members who are later rehired.

She explained that although HB2643 was not a PSPRS statute it does apply to PSPRS and CORP members and establishes a supplemental benefits plan for employees injured on duty.

In response to Board Member Springborn's inquiry regarding any ongoing lawsuits with the PSPRS regarding the contribution rate, Ms. Auckland stated that she had heard that those lawsuits existed.

Ms. Auckland explained that there was a recent ASRS case where the court determined that it was incorrect for an employer to contribute 47% and an employee to contribute 53%. She recalled that there were also a couple lawsuits addressing situations where the COLA was taken away from retirees.

## **5. Discussion of effective date of PSPRS disability retirements**

Ms. Washington recalled that in the past when the Board approved disability retirements staff had set the effective date as the first day of the month following the Board's approval of the application.

During the processing of Dart Craytor's application, staff found out that they should be setting the effective date as the first day of the month following the applicant's submission of their application and the date they terminated employment.

In response to Ms. Auckland's inquiry regarding when Fire Captain Curley's employment ended with the City of Scottsdale, Ms. Washington stated that it was March or April of 2012. Mr. Craytor's termination occurred in March 2012.

Chairman Cross pointed out that the statute requires that benefits begin the first day of the month in which one retires, which is the month one terminated employment.

Ms. Auckland summarized that the statute states the following:

"The payment of an accidental catastrophic or ordinary disability pension shall commence as of the first day of the month following the date of retirement or the expiration of a period during which the members receive sick leave."

She explained that staff was informed by the Board of Trustees that the Local Board was supposed to designate the date when the payment was to begin.

Ms. Auckland recommended that the Board add language to their standard approval motion stating "pursuant to statute, the member's pension shall commence as of the first day of the month following the date of retirement."

Ms. Washington reported that Public Safety also added a new statute restricting staff from making payments retroactive 90 days relating to Fire Local Board applications.

Ms. Auckland explained that A.R.S. § 35-85.02 titled "Payment of a Pension" states:

"The Board shall not make a retroactive payment of a pension to a person that is more than 90 days before the date of the person's application for benefits."

She stated that since the statute refers to a person rather than a member it may relate to the guardian's benefits.

Ms. Auckland suggested that staff go back to the retirement dates specific to these disability applications unless the Board of Trustees disagrees.

Chairman Cross recalled that the 2010 A.R.S. § 38-842 definition of retirement states:

"Retirement or retired means termination of employment after a member has fulfilled all requirements for a pension. Retirement shall be

considered as commencing on the first day of the month immediately following the member's last day of employment or authorized leave of absence if later."

He elaborated that the date of termination was also considered the date of retirement, noting that the checks should begin the first day of the following month.

Discussion ensued regarding whether the Fire Board must reconsider the four accidental disability cases plus the survivor benefit case recently approved instead of resubmitting the corrected paper work.

Ms. Washington explained that staff could work with Public Safety on the best way to address this matter, noting that they have a report that contains information on members who were disabled, with their effective dates.

**6. Report to the Board on recently completed transfers of prior service credits**

Ms. Washington announced that there were no recently completed transfers of prior service credits to discuss at this time.

**7. Board suggestions for upcoming agenda items**

Board Member Springborn requested that staff provide the Board with an update at the next meeting regarding the status of the five cases discussed under agenda item 5.

**ADJOURNMENT**

With no further business to discuss, being duly moved and seconded, the meeting adjourned at 11:50 a.m.

Respectfully Submitted by:

REVIEWED BY:

Ken Nemec  
PSPRS Fire Local Board Secretary

Jack Cross  
PSPRS Chairman/Mayoral Designee